

Decision **PROPOSED DECISION OF ALJ YACKNIN** (Mailed 3/5/2013)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In The Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U902E) for a Permit to Construct Electrical Facilities With Voltages Between 50 kV and 200 kV and New Substations With High Side Voltages Exceeding 50kV: The East County Substation Project

Application 09-08-003  
(Filed August 10, 2009)

**DECISION GRANTING REQUEST OF BACKCOUNTRY AGAINST DUMPS FOR  
INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO  
DECISION 12-06-039**

<b>Claimant:</b> Backcountry Against Dumps (Backcountry)	<b>For contribution to Decision (D.)</b> 12-06-039
<b>Claimed (\$):</b> 184,941.43	<b>Awarded (\$):</b> 93,894.08
<b>Assigned Commissioner:</b> Mark J. Ferron	<b>Assigned ALJ:</b> Hallie Yacknin
<b>Claim Filed:</b>	8/16/2012

**PART I: PROCEDURAL ISSUES****A. Brief Description of Decision:**

D.12-06-039 grants San Diego Gas & Electric Company (SDG&E) a permit to construct the East County (ECO) Substation Project, configured to include the ECO Substation Alternative Site combined with the ECO Partial Underground 138 kilovolt (kV) Transmission Route Alternative.

**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	<b>As Stated by Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	February 18, 2011	Correct
2. Other Specified Date for NOI:	See, ALJ Yacknin's April 7, 2011, Ruling requesting a revised NOI.	Correct
3. Date NOI Filed:	Initial NOI filed on March 21, 2011. Revised NOI filed on April 27, 2011.	Correct
4. Was the NOI timely filed?		Correct
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	Please see transcript of May 2, 2011, hearing (Evidentiary Hearing Transcript) in the present proceeding wherein ALJ Yacknin approved Backcountry's showing of customer status.	Correct
6. Date of ALJ ruling:	May 2, 2011	Correct
7. Based on another CPUC determination:		
8. Has the Claimant demonstrated customer or customer-related status?		Correct
<b>Showing of "significant financial hardship" (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	Please see the May 2, 2011, Evidentiary Hearing Transcript wherein ALJ Yacknin approved Backcountry's showing of significant financial hardship.	Correct
10. Date of ALJ ruling:	May 2, 2011	Correct
11. Based on another CPUC determination:		
12. Has the Claimant demonstrated significant financial hardship?		Correct
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.12-06-039	Correct
14. Date of Issuance of Final Decision:	June 27, 2012	Correct
15. File date of compensation request:	August 16, 2012	Correct
16. Was the request for compensation timely?		Correct

**C. Additional Comments on Part I:**

#	Claimant	CPUC	Comment
1-3		Correct	The prehearing conference took place on February 18, 2011. Backcountry timely filed its initial NOI on March 21, 2011. ALJ Yacknin's April 7, 2011, Ruling authorized Backcountry to file a revised NOI within 15 days of the Ruling. Backcountry requested an extension of time in which to file its revised NOI from April 22 to April 27, 2011. On April 21, 2011, ALJ Yacknin granted Backcountry's requested extension by email. The revised NOI was timely filed on April 27, 2011.

**PART II: SUBSTANTIAL CONTRIBUTION****A. Claimant's description of its contribution to the final decision** (*see* § 1802(i), § 1803(a) & D.98-04-059):

Contribution	Specific References to Claimant's Presentations and to Decision (Provided by Claimant)	Showing Accepted by CPUC
1. Backcountry's Protest (filed September 14, 2009) provided in-depth analysis of the adequacy of the Proponent's Environmental Assessment (PEA), including but not limited to arguments for expanding the scope of the project analysis to include the impacts of foreseeable wind energy-related projects that will connect to the substation, such as the Energia Sierra Juarez U.S. Generator-Tie (ESJ) and Tule Wind projects. The Draft Environmental Impact Report (DEIR) and Final Environmental Impact Report (FEIR) included extensive analysis of the environmental impacts of those two projects. In addition, Backcountry's Protest provided critical information on other aspects of the DEIR/FEIR analysis, including, <i>inter alia</i> , the adequacy of the DEIR/FEIR's treatment of the project setting, project purpose and need, agency coordination, selection of alternatives, indirect effects,	PEA, at 1-1 to 1-9 (failing to include discussion of the Tule Wind, ESJ, or any other related projects in its analysis).  Protest at 3 ("the PEA fails to include a list or a map of the proposed wind energy projects that will use the ECO and Boulevard substations or to analyze the impacts of those future, foreseeable projects. The PEA admits that the project will expand the interconnect capability of the southeastern transmission system 'to accommodate all of the region's planned renewable generation (based on data in the CAISO Generator Interconnection Queue as of June 2009) . . . . ' PEA, at 1-3. The projects that will connect to the ECO and Boulevard substations should be discussed as part of this project's impacts and, at a minimum, a map depicting the general location of the	In part. See Reason discussion in Part III.C, #1.

<p>fire, water, greenhouse gas (GHG) emissions, soil, invasive species, noise, visual and night sky, conservation initiatives, rural blight, cumulative impacts, and growth inducing impacts. The Protest thus highlighted multiple issues that required substantial analysis in the environmental review process.</p>	<p>proposed wind farms should have been produced as part of the project description”).</p> <p>Protest, at 6 (“The PEA fails to fully and adequately describe and analyze the indirect impacts of the ECO substation. The substation is specifically designed to connect six proposed projects in the area to the SWPL. It also will be designed to ‘accommodate additional renewable generation in the future, beyond what is currently in the CAISO Queue.’ PEA, at 2-7. To the extent that the impacts from these projects and their generation tie-lines are ‘reasonably foreseeable,’ they must be addressed in the PEA as indirect impacts. CEQA Guidelines §§ 15064, 15126.2, 15130. [Backcountry] assert that the many, large-scale projects that are dependent on the construction of the ECO substation will have significant impacts on the region’s environment. Massive wind farms have the proven capacity to kill thousands of birds each year. Similarly, large scale solar-thermal projects can create superheated zones around the collector towers that can reach ambient temperatures of 800 degrees, hot enough to literally cook birds in mid-flight. Endangered species, such as the Peninsular Bighorn Sheep and the Quino Checkerspot Butterfly, also inhabit the area and will be adversely affected by the construction and operation of the renewable energy projects. An EIS/EIR will therefore be required to address these and many other significant indirect impacts”).</p> <p>SDG&amp;E Reply to Protest, at 3-5 (disagreeing that the impacts of the Tule Wind, ESJ, or any other projects</p>	
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	<p>should be incorporated into the analysis of the ECO substation).</p> <p><i>See, e.g.</i>, DEIR, at ES-1 (including “East County (ECO) Substation, Tule Wind, and Energia Sierra Juarez U.S. Generator-Tie (ESJ Gen-Tie)” in its proposed project description; FEIR, at ES-2 (same).</p> <p>Protest, <i>passim</i> (discussing multiple other issues, including but not limited to the adequacy of the DEIR’s discussion of the project setting, project purpose and need, agency coordination, selection of alternatives, indirect effects, fire, water, GHG emissions, soil, invasive species, noise, visual and night sky, conservation initiatives, rural blight, cumulative impacts, and growth inducing impacts).</p>	
<p>2. Backcountry submitted to the Commission multiple documents throughout the environmental review process, providing the Commission with extensive comments and analysis of the environmental impacts of the Project. These documents included, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>• Scoping comments, submitted on February 12, 2010</li> <li>• Comments on the DEIR, submitted on March 4, 2011</li> <li>• Opening Brief, filed November 7, 2011</li> <li>• Reply Brief, filed November 17, 2011</li> <li>• Comments on the Proposed Interim Decision, filed on April 9, 2012</li> <li>• Reply Comments on the Proposed Interim Decision, filed on April 13, 2012</li> </ul>	<p>Scoping comments, at 5 (“the EIR/EIS should analyze the alternative of undergrounding all or portions of the proposed transmission lines. The benefits of this alternative include reduced fire danger, risk to aircraft, avian mortality and other biological impacts, and improved aesthetics”).</p> <p>Scoping comments, at 7, 9-10 (same).</p> <p>DEIR, Table C-1 (listing alternatives considered, including underground alternatives).</p> <p>Decision granting SDG&amp;E a permit to construct the ECO Substation Project, at 5-6 (discussing partial undergrounding of transmission line to reduce environmental impacts).</p> <p>Comments on the DEIR, <i>passim</i> (discussing multiple other issues, including but not limited to the</p>	Yes.

<p>By filing these comment letters and briefs, Backcountry raised numerous important issues that were addressed by the Commission in the DEIR and FEIR process. For example, in its scoping comments, Backcountry advocated for placing transmission lines underground to avoid visual, biological, and fire-related impacts. The DEIR then included at least two underground alternatives, one of which became the final Project alignment. Backcountry also provided analysis on many other critical issues, including, <i>inter alia</i>, the adequacy of the DEIR's discussion of the project setting, project purpose and need, agency coordination, selection of alternatives, indirect effects, fire, water, greenhouse gas emissions, soil, invasive species, noise, visual and night sky, conservation initiatives, rural blight, cumulative impacts, and growth inducing impacts. Backcountry's comments not only provided the Commission important analysis of the adequacy of the EIR process and influenced its decision making process, they also contributed to a more robust level of public disclosure in that the Commission responded to each of Backcountry's comments in its Response to Comments.</p>	<p>adequacy of the DEIR's discussion of the project setting, project purpose and need, agency coordination, selection of alternatives, indirect effects, fire, water, GHG emissions, soil, invasive species, noise, visual and night sky, conservation initiatives, rural blight, cumulative impacts, and growth inducing impacts).</p> <p>Opening Brief, <i>passim</i> (same).</p> <p>Reply Brief, <i>passim</i> (same).</p>	
<p>3. Backcountry also provided the Commission with extensive briefing on the issue of whether the Commission was required to issue a Certificate of Public Convenience (CPCN) rather than a PTC in order to authorize Project construction. While the Commission found, in the end, that the Project could be authorized by means of a PTC, Backcountry's briefing of the issue provided the Commission with pertinent legal analysis and thereby ensured a complete consideration of the issue.</p>	<p>Opening Brief, filed February 28, 2011.</p> <p>Reply Brief, filed March 7, 2011.</p> <p>Scoping Memo and Ruling, issued March 15, 2011, at 3-4 (Discussing whether a CPCN is required).</p>	<p>No. See Reason discussion in Part III.C, #2.</p>

<p>4. Backcountry and its experts presented substantial evidence and argument showing that SDG&amp;E's initial Magnetic Field Management Plan (MFMP) for the proposed 13.3-mile 138 kV transmission line connecting the ECO Substation and the rebuilt Boulevard Substation did not comply with the Commission's policies governing the analysis and mitigation of electric and magnetic field (EMF) emissions and impacts. Specifically, Backcountry and its experts demonstrated that SDG&amp;E improperly failed to consider low-cost EMF mitigation measures in its initial MFMP, instead assuming erroneously that the entire 138 kV transmission line corridor was "undeveloped land" (and zoned either as "agricultural" or "undeveloped" land) without occupied residences. As Backcountry's experts, Donna Tisdale and Jamey Volker, J.D., M.C.P., showed in their respective prepared direct testimonies, the adjacent land is <i>not</i> undeveloped and houses numerous occupied residences and other sensitive receptors within 1,000 feet of the transmission line right-of-way. <i>See</i> Tisdale Testimony (Exhibit 3 to this Proceeding), ¶¶ 4-7; Volker Testimony (Exhibit 4 to this Proceeding), ¶ 6, Exhibit 5. As a result, ALJ Yacknin ordered SDG&amp;E to revise its MFMP to, among other things, evaluate the environmentally superior project alternative and "reflect the status of the [nearby] residences with regard to how close they are [and] with regard to whether or not they are occupied." May 2, 2011, Evidentiary Hearing Transcript at 102. As Allen Trial, attorney for SDG&amp;E, admitted in the May 2, 2011, hearing, it is because Backcountry "presented [its] point that there are</p>	<p>February 18, 2011, Prehearing Conference Transcript, at 65-66 (ALJ Yacknin: "Does Backcountry intend to – or does Backcountry intend to dispute the issue of whether SDG&amp;E's magnetic field management plan complies with Commission policies adopted in Decision 06-01-042?" Backcountry Attorney Volker: "Yes, your honor.").</p> <p>March 15, 2011, Assigned Commissioner's Scoping Memo and Ruling, at 5 (setting scope of issues to be determined in this proceeding to include Project "compliance with the Commission's policies governing the mitigation of EMF effects"), 7 (affirming that "Parties may present written testimony challenging SDG&amp;E's compliance on [the EMF] issue" and setting the May 2, 2011, date for an evidentiary hearing on that issue, among others).</p> <p>April 4, 2011, Tisdale Testimony, ¶¶ 5-7 (detailing presence of at least 24 occupied residences and other sensitive receptors within 1,000 feet of the right-of-way for the ECO Substation's 138 kV transmission line, thus requiring revision of the MFMP to consider low-cost EMF mitigation measures).</p> <p>April 4, 2011, Volker Testimony, ¶ 6, Exhibit 5 (demonstrating that the lands adjacent to the 138 kV transmission line right-of-way are <i>not</i> "zoned agricultural and undeveloped land" as the initial MFMP stated; rather, all the zoning designations on the pertinent lands <i>allow</i> residential or other non-agricultural uses).</p>	<p>Yes.</p>
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<p>residences [near the ECO Substation facilities] . . . [that SDG&amp;E] will present a new revised plan that addresses that issue and is specific on that issue.” Evidentiary Hearing Transcript at 103.</p>	<p>May 2, 2011, Evidentiary Hearing Transcript, at 86 (ALJ Yacknin expressing “concern[] that the plan that [SDG&amp;E] seem[s] to endorse errs on the assumption that the residences are not adjacent and are unoccupied rather than more conservatively errs on the assumption that they are adjacent and occupied”).</p> <p>May 2, 2011, Evidentiary Hearing Transcript, at 87 (ALJ Yacknin: “I don’t quite understand why SDG&amp;E has provided an MFMP based on an assumption that adjacent land is undeveloped even though SDG&amp;E’s own PEA identifies 25 residences”).</p> <p>May 2, 2011, Evidentiary Hearing Transcript, at 88 (ALJ Yacknin: “The burden in this case is on the Applicant. And while I appreciate that you may not be able to prepare a final MFMP until you know the final configuration of the project, as I sit here I would expect SDG&amp;E to step up a little bit more.”).</p> <p>May 2, 2011, Evidentiary Hearing Transcript, at 90 (ALJ Yacknin: “I would appreciate [revision of the MFMP] and direct it – and will direct it.”).</p> <p>May 2, 2011, Evidentiary Hearing Transcript, at 102 (ALJ Yacknin: “[M]y concern is that it’s apparent to me that the current MFMP does not reflect or did not consider or make any statement regarding – let me back up – that the MFMP seems to make assumptions that it has not verified, and I would like to have the MFMP reflect the status of the residences with regard to how close they are, with regard to whether or not they are</p>	
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	<p>occupied, because the way it is written now it appears to be based on untested assumptions that are fully within SDG&amp;E's ability to test.”)</p> <p>May 2, 2011, Evidentiary Hearing Transcript, at 103 (Allen Trial, attorney for SDG&amp;E, stating that it is because Backcountry “presented [its] point that there are residences [near the ECO Substation facilities] . . . [that SDG&amp;E] will present a new revised plan that addresses that issue and is specific on that issue.”).</p> <p>D.12-06-039, at 3 (“the Commission will not certify a project unless its design is in compliance with the Commission’s policies governing the mitigation of electromagnetic field (EMF) effects using low-cost and no-cost measures”).</p> <p>D.12-06-039, at 16 (“BAD presented evidence challenging the sufficiency of the original August 10, 2009, MFMP”).</p> <p>D.12-06-039, at 15 (“pursuant to order of the administrative law judge, [SDG&amp;E] supplemented the MFMP to address the environmentally superior alternative identified in the EIR/EIS and impacts on 25 identified residences within 1,000 feet of the project route”).</p>	
5. Backcountry provided rebuttal testimony, responding to SDG&E’s direct testimony of Mariam Mirzadeh on the feasibility and environmental inferiority of the “No Project” alternative.	Rebuttal Testimony of Bill Powers, submitted on April 18, 2011.	No. See Reason discussion in Part III.C, #3.

<p>6. Backcountry presented legal argument on the question of whether mitigation measures can be rejected as infeasible based on an analysis of the relative weights of the environmental benefits verses the economic costs. The Commission determined that California Environmental Quality Act (CEQA) does not allow such balancing, agreeing with Backcountry's position.</p>	<p>Reply Comments on Proposed Decision, filed June 11, 2012, at 3-4 (“CEQA does not require the Commission to balance the PRC Section 21081(a)(3) factors in determining that the environmentally superior alternative is feasible. PRC Section 21081(a) requires agencies to make explicit findings of mitigation measure <i>infeasibility</i> before approving a project with significant environmental impacts remaining after mitigation. Neither PRC Section 21081(a) nor any other provision of CEQA requires agencies to make findings documenting the <i>feasibility</i> of adopted mitigation measures or alternatives. Doing so would make it much more onerous for agencies to adopt measures to mitigate environmental impacts and could even dissuade them from doing so, contrary to CEQA’s mandate that agencies including the Commission ‘take all action necessary to protect, rehabilitate and enhance the environmental quality of the state.’ PRC § 21001(a)”).</p> <p>D.12-06-039, at 16-17 (“while environmental factors are relevant for the purpose of identifying potentially feasible mitigation measures and project alternatives in the EIR pursuant to CEQA Guideline § 15126.6(a), they do not support an agency’s finding that an identified potentially feasible mitigation measure or alternative is ultimately infeasible (or feasible) pursuant to Pub. Res. Code § 21081(a)(3) and CEQA Guideline § 15091(a)(3). An agency may find an identified mitigation measure or alternative to be infeasible for “[s]pecific economic, legal, social,</p>	<p>Yes.</p>
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	technological, or other considerations.” ( <i>Id.</i> ) It may not reject a mitigation measure as infeasible on the basis of the relative weight that it gives to the significant environmental impact that the mitigation measure would mitigate or eliminate. Indeed, it would undercut the very premise of CEQA were agencies at liberty to do so”).	
7. Backcountry identified an error in the proposed decision’s characterization of the final EIR/EIS as identifying the number of residences within 1,000 feet of the 138 kV transmission line right of way route as 25.	D.12-06-039, at 18 (“BAD identifies an error in the proposed decision’s characterization of the final EIR/EIS, as opposed to the draft EIR/EIS, as identifying the number of residences within 1,000 feet of the 138 kV transmission line right of way route as 25, which we correct”).	Yes.

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</b>	No	Correct
<b>b. Were there other parties to the proceeding with positions similar to the Claimant’s?</b>	No	Correct
<b>c. Names of other parties (if applicable):</b> N/A		
<b>d. Claimant’s description of how Claimant coordinated with DRA and other parties to avoid duplication or of how Claimant’s participation supplemented, complemented, or contributed to that of another party:</b> N/A		

**C. Additional Comments on Part II:**

<b>#</b>	<b>Claimant</b>	<b>CPUC</b>	<b>Comment</b>

**PART III: REASONABLENESS OF REQUESTED COMPENSATION****A. General Claim of Reasonableness (§§ 1801 & 1806):**

<b>a. Explanation by Claimant of how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation</b>	<b>CPUC Verified</b>
<p>Backcountry's participation provided the following results, among others:</p> <ul style="list-style-type: none"> <li>• Contributed to the decision to expand the scope of the EIR's analysis of impacts to include reasonably foreseeable projects, including Tule Wind and ESJ;</li> <li>• Identified the importance of considering underground line options, which were then incorporated into the EIR process and final approval;</li> <li>• Called into question the adequacy of SDG&amp;E's MFMP, which was thereafter substantially revised in response to Backcountry's criticism;</li> <li>• Enhanced the Commission's public disclosure by submitting substantive comments on the DEIR that prompted extensive additional analysis, including new information, in the Commission's response to comments;</li> <li>• Provided analysis of the feasibility of the "no project" alternative;</li> <li>• Contributed to the analysis and determination of whether the Project required a CPCN or a Permit to Construct, a question of procedure that was in need of clarification;</li> <li>• Provided legal analysis on the proper procedure for determining when mitigation measures should be deemed infeasible.</li> <li>• Identified an error in the FEIR regarding the number of residences within 1,000 feet of the transmission line;</li> </ul> <p>Additionally, Backcountry's participation helped the Commission develop vital information on the Project by providing a different perspective and analysis of the Project's relative costs and benefits throughout this multi-phase decision making process. As discussed below, Backcountry strived to be efficient, without sacrificing quality of participation, at every turn. The cost of Backcountry's participation is thus commensurate with the benefits of its participation.</p>	<p>See Part III.C, #1, #2, and #3</p>
<p><b>b. Reasonableness of Hours Claimed</b></p> <p>Backcountry endeavored to provide the Commission with highly relevant information and analysis throughout the proceeding, while at the same time limiting the time it spent on related tasks to the extent possible. The hours listed below do not include all hours spent in the present proceeding, as certain preliminary, investigatory time entries have been eliminated as well as work performed on related matters that informed Backcountry's participation in the present proceeding.</p>	<p>See Part III.C, #1, #2, #3, #4, and #5</p>

<b>c. Allocation of Hours by Issue</b> See Attachment 14.	See Part III.C, #1, #2, #3, #4, and #5
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**B. Specific Claim\*:**

CLAIMED					CPUC AWARD			
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Total	Year	Hours	Rate	Total
Stephan C. Volker	2009-2012	88.3	\$650	\$57,395	2011	54.5	\$330	\$17,985
					2012	5.9	\$335	\$1,976.50
Joshua A.H. Harris	2009-2012	62.5	\$300	\$18,750	2011	33.1	\$280	\$9,268
					2012	5.5	\$285	\$1,567.50
Jamey M.B. Volker	2011-2012	284.2	\$200	\$56,840	2011	179.7	\$150	\$26,955
					2012	54.2	\$155	\$8,401
Stephanie Abrahams	2010-2012	10.7	\$220	\$2,354	2011	10.3	\$200	\$2,060
					2012	0.4	\$205	\$82
Michael S. McCann	2010-2011	33.5	\$390	\$13,065	2010-2011	33.5	\$390	\$13,065
David Colling	2011	3	\$185	\$555	2011	0	n/a	\$0
Bill Powers	2011	34	\$250	\$8,500	2011	0	n/a	\$0
Jamey M.B. Volker	2011	20.7	\$150	\$3,105	2011	5.40	\$150	\$810
Subtotal:				\$160,564	Subtotal:			\$82,170
OTHER FEES								
Item	Year	Hours	Rate	Total	Year	Hours	Rate	Total
Shanna Foley	2009	6	\$110	\$660	2009	1.2	\$110	\$132
Jamey M.B. Volker	2009	33.7	\$110	\$3,707	2009	6.74	\$110	\$741.40
Subtotal:				\$4,367	Subtotal:			\$873.40
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Total	Year	Hours	Rate	Total
Stephan C. Volker	2010-2012	8.2	\$325	\$2,665	2011	3.9	\$165	\$643.50
					2012	1.5	\$167.50	\$251.25
Joshua A.H. Harris	2009-2012	53.3	\$150	\$7,995	2011	14.9	\$140	\$2,086
					2012	11.8	\$142.50	\$1,681.50
Jamey M.B. Volker	2011-2012	21.5	\$100	\$2,150	2011	3.1	\$75	\$232.50
					2012	8.2	\$77.50	\$635.50
Michael McCann	2011	16	\$195	\$3,120	2011	16	\$77.50	\$1,240

<b>Subtotal:</b>			<b>\$15,930</b>	<b>Subtotal:</b>		<b>\$6,770.25</b>
<b>COSTS</b>						
<b>#</b>	<b>Item</b>	<b>Detail</b>	<b>Amount</b>	<b>Amount</b>		
	See Attachment 3		\$4,080.43			\$4,080.43
<b>Subtotal:</b>			<b>\$4,080.43</b>	<b>Subtotal:</b>		<b>\$4,080.43</b>
<b>TOTAL REQUEST :</b>			<b>\$184,941.43</b>	<b>TOTAL AWARD :</b>		<b>\$93,894.08</b>
<p>* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>** Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate (the same applies to the travel time).</p>						

**C. CPUC Disallowances & Adjustments:**

<b>#</b>	<b>Reason</b>
1	<p>Backcountry claims approximately \$25,000 (approximately 45 hours of attorney time (J. Harris and S. Volker) and 40 hours of law clerk time (S. Foley and J. Volker ) for the contribution made by its protest (Issue A.) We disallow 80% of these hours (across all attorneys and law clerks) because the protest did not contribute to any CPUC determination and because the hours claimed are unreasonable for the purpose of preparing the protest and reply. Although, Backcountry characterizes the protest as an "issue," a protest is not an issue to be determined by the Commission. The protest did not serve the procedural purpose of a protest pursuant to Rule 2.6(b), which is to state the grounds upon which the application should be denied in whole or in part, or pursuant to Rule 2.6(c), which is to present useful information. The protest merely critiqued the applicant's Proponent's Environmental Assessment; it did not assert or demonstrate that the PEA was deficient pursuant to Rule 2.4, the adequacy of the PEA was not an issue in the proceeding, and the CPUC did not make any finding with respect to the adequacy of the PEA. The protest requested that the CPUC produce an EIR, but it did not contribute to the CPUC's determination pursuant to CEQA to do so; while the CPUC ultimately endorsed it, that determination was made by the Energy Division outside of the formal proceeding. As it was preliminarily determined that a hearing was needed (Res. ALJ-176-3239), a protest was not required in order to cause the setting of a prehearing conference pursuant to Rule 7.2. Thus the only purpose served by the protest was to alert the CPUC and the applicant to Backcountry's interest in participating in the proceeding, which could reasonably have been accomplished within 20% of the hours claimed.</p>

2	The claimed compensation for Backcountry's alleged contribution to the issue of whether the project required a CPCN as opposed to a Permit to Construct (Issue C) is disallowed. Backcountry did not prevail on the issue or contribute to the CPUC's resolution of it. We disallow all related attorney, expert, and advocate fees.
3	The claimed compensation for Backcountry's alleged contribution to the issue of the feasibility of the "No Project" alternative (Issue E) is disallowed. Backcountry did not prevail on the issue or contribute to the CPUC's resolution of it.
4	Backcountry requests compensation for more than 80 hours of attorney time (S. Volker, J. Harris, and J. Volker) preparing the notice of intent to claim compensation and the request for compensation. We disallow 50% of these hours because these tasks could reasonably have been accomplished within 40 hours.
5	Backcountry requests compensation for 5.4 hours of expert time by J. Volker for preparation of his direct testimony. Most of J. Volker's prepared testimony was stricken from the record, and Backcountry does not indicate whether the claimed 5.4 hours represents time spent preparing the entirety of the proffered testimony or only the portion that was received into evidence. As the claimed 5.4 hours might reasonably relate only to the portion of prepared testimony that was received into evidence, we will allow it. However, Backcountry and its representatives are advised to clearly address such circumstances and claims in any future requests for compensation.
6	Backcountry requests an hourly rate of \$600 for S. Volker for his work as an attorney. The Commission most recently assigned to S. Volker an hourly rate of \$330 rate for work completed in 2008; this rate reflects two annual 5% "step increases" pursuant to D.07-01-009. (D.09-06-047 at 13, citing to D.09-05-011 at 14-15.) Pursuant to D.07-01-009, no further annual step increases are authorized at this time, and S. Volker may not seek a new rate at this time as it is less than four years since the Commission assigned his last authorized rate. We adopt S. Volker's hourly rate of \$330 for 2011.
7	Backcountry requests an hourly rate of \$300 for J. Harris for his work as an attorney. The Commission most recently assigned to J. Harris an hourly rate of \$280 for work performed in 2009/2010. (D.11-05-016.) Pursuant to D.07-01-009, J. Harris may not seek a new rate at this time as it is less than four years since the Commission assigned his last authorized rate, and Backcountry does not request a step increase pursuant to D.08-04-010 (at 12-13). We adopt J. Harris's hourly rate of \$280 as his 2011 rate.
8	Backcountry requests an hourly rate of \$200 for J. Volker for his work as an attorney beginning in February 2011. J. Volker became an attorney in December 2009. The hourly rate range for attorneys with 0-2 years of experience is \$150-\$205. (Res. ALJ-267.) Backcountry's request for compensation does not persuade us to authorize a higher hourly rate than \$150. We authorize a 2011 hourly rate of \$150 for J. Volker.
9	Backcountry requests an hourly rate of \$220 for S. Abrahams for her work as an attorney beginning in February 2011. S. Abrahams became an attorney in December 2008. The hourly rate range for attorneys with 3-4 years of experience is \$200-\$235. (Res. ALJ-267.) Backcountry's request for compensation does not persuade us to authorize a higher hourly rate than \$200. We authorize a 2011 hourly rate of \$200 for S. Abrahams.

10	Backcountry requests an hourly rate of \$185 for D. Colling for his work as an expert. Backcountry does not provide a timesheet or otherwise describe the work performed by D. Colling beyond the notation, "David Colling, Expert Witness – approximately 3 hours in 2011 on Issue B." (Request, Attachment 2, at 20.) We disallow this claim for lack of documentation. Accordingly, we do not reach the issue of what hourly rate to authorize for his work.
11	Pursuant to Res. ALJ-281, we apply the 2.2% cost of living increase and authorize the following hourly rate for all work performed by the attorneys beginning in 2012 (rates are rounded to nearest \$5): S. Volker - \$335, J. Harris - \$285, J. Volker - \$155, S. Abrahams - \$205.

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the claim?</b>	No
<b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6)) (Y/N)?</b> Backcountry Against Dumps filed comments on the proposed decision on March 22, 2013.	No

**FINDINGS OF FACT**

1. Backcountry Against Dumps has made a substantial contribution to Decision (D.) 12-06-039.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$93,894.08.

**CONCLUSION OF LAW**

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

**ORDER**

1. Backcountry Against Dumps is awarded \$93,894.08.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay Backcountry Against Dumps (Backcountry) the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 30, 2012, the 75th day after the filing of Backcountry's request, and continuing until full payment is made.



3. The comment period for today's decision is not waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D1206039	
<b>Proceeding(s):</b>	A0908003	
<b>Author:</b>	ALJ Hallie Yacknin	
<b>Payer(s):</b>	San Diego Gas & Electric Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier</b>	<b>Reason Change/Disallowance</b>
Backcountry Against Dumps	8/16/2012	\$184,941.43	\$93,894.08	No	Lack of substantial contributions, excessive hours, excessive rates.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>	
						<b>Year</b>	<b>Rate</b>
Stephen	Volker	Attorney	Backcountry Against Dumps	\$650	2009-2012	2011	\$330
						2012	\$335
Joshua A.H.	Harris	Attorney	Backcountry Against Dumps	\$300	2009-2012	2011	\$280
						2012	\$285
Jamey M.B.	Volker	Attorney	Backcountry Against Dumps	\$200	2011-2012	2011	\$150
						2012	\$155
Stephanie	Abrahams	Attorney	Backcountry Against Dumps	\$220	2010-2012	2011	\$200
						2012	\$205
Michael	McCann	Expert	Backcountry Against Dumps	\$390	2010-2011	\$390	
David	Colling	Expert	Backcountry Against Dumps	\$185	2011	n/a	
Bill	Powers	Expert	Backcountry Against Dumps	\$250	2011	n/a	
James M.B.	Volker	Expert	Backcountry Against Dumps	\$150	2011	\$150	

**(END OF APPENDIX)**